

# LOCAL REGULATORY COMPLIANCE

## OVERVIEW

California cities and counties have adopted local zoning or other ordinances and general plans that govern land development within their respective jurisdictions. Many development activities are subject to approvals and entitlements from cities or counties. Although most jurisdictions have similar requirements, each is likely to have its own unique regulations.

## WHO NEEDS TO COMPLY?

The following CALFED actions may require city or county approval:

- actions that involve earthmoving activities, including those that involve changes to gravel mining practices;
- activities within local road rights-of-way (ROWS);
- building of a structure or significant modification or renovation of an existing structure; and
- construction inconsistent with local land-use designations.

## WHAT ARE THE LOCAL PERMIT AND CONSULTATION PROCESSES?

The following is an overview of approvals or entitlements that may be required by local municipalities.

**GRADING PERMITS.** Grading permits are required for earthmoving activities. City or county public works departments require permits for cut-and-fill activities that exceed minimum thresholds set by local grading ordinances. Grading permits can be obtained from the public works department of the city or county where the project site is located.

Generally, the project proponent should provide grading plans that describe existing conditions and the proposed work. Cities or counties will most likely require a project proponent to submit information about the property's location, utility easements, topography, soils, existing structures, waterways, and other details. Some jurisdictions also may require the project proponent to submit environmental information on a questionnaire or checklist.

Grading plans are reviewed for compliance with local grading ordinances. Depending on the magnitude of the project and the adopted procedures of the jurisdiction where the project would occur, environmental review may be required before a permit is issued (see "National Environmental Policy Act and California Environmental Quality Act" earlier in this chapter).

Review of grading plans may also lead to other permit requirements. For example, some jurisdictions have tree ordinances that require permits for tree removal. If grading would result in the removal of trees of a protected size or species (e.g., native oaks), a tree permit may be required.

**ENCROACHMENT PERMITS.** Encroachment permits are required when an applicant proposes any construction activity within the ROW of a public road. An application should be submitted to the public works or roads department of the city or county where the activity is proposed.

**BUILDING PERMITS.** Building permits typically are required when a project applicant proposes to erect a structure or significantly modify or renovate an existing structure. An application should be submitted to the public works or building department of the city or county where the structure will be located. The project applicant will be required to provide multiple copies of building plans that show all aspects of the proposed construction.

**SPECIAL-USE OR CONDITIONAL-USE PERMITS.** Special-use or conditional-use permits often are required when a project applicant proposes a use for a property that is not a designated land use in the zoning for that property. Local zoning ordinances typically identify land uses that are permitted in specific land use zones and those that require a use permit. City or county planning agencies or community development agencies typically process applications for special-use and conditional-use permits. These permits are usually subject to consideration at a public hearing.

**SUBDIVISION MAP APPROVAL.** The State Subdivision Map Act provides the legal basis for local governments to regulate private land divisions in California for the purposes of sale, lease, or financing. Local plans and ordinances provide criteria for lot sizes, subdivision design, and required improvements. Applications for approval of subdivision maps are submitted to the city or county planning department or community development department for processing. A tentative subdivision map is subject to consideration by the planning commission at a public hearing in most jurisdictions.

**SPECIFIC PLAN.** A city, county, or upon approval, landowner or group of landowners may use a specific plan to plan development of an area. A specific plan includes a land-use scheme, development standards, and details on supporting infrastructure and public facilities financing. The plan can be prepared by the landowners, the city, or the county. Applications for specific plans must be submitted to the city or county planning department or the community development department for processing. A specific plan must be considered by the planning commission and the city council or board of supervisors at public hearings before it may be approved.

**ZONING ORDINANCE AMENDMENT.** A zoning ordinance amendment is typically required if the proposed use of land is not permitted conditionally or by right (i.e., without additional zoning permits) in the property's land use zone. Applications for a zoning ordinance amendment must be submitted to the city or county planning department or the community development department for processing. An application must be considered by the planning

commission and the city council or board of supervisors at public hearings before it may be approved.

**SURFACE MINING AND RECLAMATION ACT.** The Surface Mining and Reclamation Act of 1975, as amended (SMARA), provides to the [California Department of Conservation \(CDC\)](#) and the [State Mining and Geology Board \(SMGB\)](#) oversight responsibilities for surface mining activities. Counties have the authority to adopt ordinances, set guidelines and approve individual mining and reclamation activities. The SMGB can, under certain circumstances, assume authority to regulate mining in non-performing counties.

CALFED actions that could be subject to SMARA compliance include the reuse of dredged materials outside the areas from which they were taken, changes to gravel mining practices, and the purchase of mined materials, such as gravel. State agencies may only purchase gravel or other mined materials from suppliers who have met all SMARA requirements (known as the AB3098 list). This list is published quarterly in the State Contractors Register. Individual applicants would submit an application, including a reclamation plan, to the county for approval. Under most local ordinances, approval would be granted in the form of a conditional-use permit or special-use permit.

**WILLIAMSON ACT (LAND CONSERVATION ACT OF 1965).** The Williamson Act is a State law that allows local governments to contract with private landowners to restrict specific parcels of land to agricultural or related open-space use. In return, landowners receive lower than normal property tax assessments because they are based on farming and open-space value as opposed to full market land value. The State of California participates in the Williamson Act program by providing payments to counties to offset the property tax revenue reductions associated with the program. The California Department of Conservation (CDC) oversees the Williamson Act program at the State level.

Some CALFED actions related to habitat restoration could involve acquiring land under Williamson Act contracts (hereafter called contracted land) by federal, State, and local agencies. Williamson Act contracts are enforceable restrictions that go with the land. They are not similar to zoning or other planning tools, but actually encumber the sale and use of the parcels involved.

**Government Acquisitions.** For all acquisitions, the State's policy is to avoid locating public improvements on Williamson Act-contracted land whenever feasible. Restrictions on public agency acquisitions of agricultural preserve and contracted lands are in Government Code Sections 51290-51295, and apply to Federal, State and local acquisitions. Sections 51290-51294 deal with requirements for public land acquisitions. Section 51295 deals with the mechanics of the acquisition. Section 51295 applies to public land acquisitions done by eminent domain or in lieu of eminent domain only.

According to Government Code Section 51291(b), whenever a public agency plans to acquire land within an agricultural preserve for a public use, it must advise the director of the CDC and the local agency (e.g., city or county) administering the contract that it intends to acquire the land. Within 30 days of notification, the director of the CDC and the administering agency must provide the acquiring agency with comments regarding the proposed acquisition.

The CDC is also required to solicit comments from the Secretary for the Department of Food and Agriculture. The acquiring agency considers these comments before it acquires the contracted land. (The comments provided by the CDC director are intended to address issues related to agricultural land use, including the potential effects of the proposal on the conversion of adjacent agricultural lands.) After considering these comments, the acquiring agency may continue with its planned acquisition or acquire a different site.

Land acquisition or proposed public uses will not be invalidated if any public agency fails to comply with these reporting requirements; however, noncompliance by an agency other than a State agency can be used as evidence in litigation on acquiring contracted land or contracting public improvements on contracted lands.

Before acquisition, the agency must make findings that none of the conditions described in Government Code Section 51292 apply. These conditions state that no public agency shall locate a public improvement in an agricultural preserve based primarily on the lower costs of acquiring lands in the agricultural preserve. Additionally, no public agency shall acquire land under contract if there is other land where it is reasonably feasible to locate the public improvement. The following improvements are excluded from Section 51292 findings requirements:

- flood-control works, including channel rectification and alteration; and
- public works required for fish and wildlife enhancement and preservation.

While these types of projects are exempted from the findings requirements, other sections (e.g., Section 51290 and 51291) still apply. Also, while fish screens or other construction could be considered a public improvement exempt under Section 51293, purchasing land for future flooding or habitat-related purposes would probably not be considered a “public works” project under that section.

Public agencies that acquire land in an agricultural preserve also are required to notify the director of CDC within 10 days of the acquisition. If a public agency acquires Williamson Act land and later returns it to private ownership, the restrictions of the original Williamson Act contract still apply.

**Before acquiring lands in agricultural preserves**, consult early with the Department of Conservation’s Division of Land Resource Protection. Staff can assist in identifying Williamson Act and agricultural preserve parcels, in providing Williamson Act maps, and in providing examples of successful public agency acquisitions.

## **DO THESE PROCESSES TRIGGER THE NEED FOR COMPLIANCE WITH OTHER REGULATIONS?**

CEQA compliance is normally required for an applicant to receive city or county approvals or entitlements, including special use and conditional use permits, subdivision maps, specific plans, and proposed zoning amendments. CEQA compliance may also be required for

certain grading and building permits, depending on whether they are considered discretionary. It should be noted that CEQA Guidelines include removal of lands from the Williamson Act as an indicator of a significant environmental impact.

#### **WHAT ARE THE OPPORTUNITIES FOR FACILITATING COMPLIANCE WITH THESE PROCESSES?**

The following steps are recommended to simplify and streamline local regulatory compliance processes for CALFED actions.

- **Consult early with local agencies.** To simplify local regulatory compliance, it may be appropriate to schedule early discussions with local municipalities (e.g., cities, counties, regional authorities) to ensure that CALFED actions are consistent with the goals and policies of existing general and specific plans, zoning ordinances, and building codes and that local permits or waivers are obtained as required.
- **Prepare comprehensive CEQA documentation.** CEQA documentation prepared for the CALFED project should address local permitting. Draft CEQA documents should be sent to the involved agencies during the review and consultation period. This can reduce or eliminate the need for subsequent CEQA documents.



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